

### **REMARKS/ARGUMENTS**

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

The examiner has rejected independent claim 15 and dependent claims 18, 20 and 23-30 under 35 U.S.C. 103 as being unpatentable over Baumgart et al. (US Patent 5976138) in view of Baumgart et al. (Clinical Orthopedics 1997). Applicant respectfully traverses this rejection for the reasons set forth hereinbelow.

The '138 reference, the primary reference, is drawn to a device wherein the whole device is one piece. A borehole 50 is shaped into the two primary fragments 83 and 84 of bones. The distraction system comprising the guide socket 42 and the intramedullary pin 10 is introduced into borehole 50 in primary proximal fragment 83. Attachment bolts 80a, 80b and 80c are guided through attachment holes 15 and anchored in primary distal fragment 84. Further, an attachment bolt 81 is past through longitudinal holes 16 in the wall 11 of the intramedullary pin and through attachment hole 22 and inner part 20, and anchored in displacement element 85. There is difficulty to find the attachment hole 22 by the attachment bolt 81 in this design.

Furthermore, the inner part 20 of '138 is a sleeve-like part and is arranged within the pin 10. Because of the inner part 20, in which the attachment bolt 81 is fixed, the travel way for segment transport is very limited. Because the spindle must be completely incorporated in the innerpart 20 after the segment transport, only half of the length of that traveled in the device of the present invention can be traveled by the reference '138.

According to the present invention the inventive device is divided in two parts namely a guide element 1 and a drive unit

2. The third element is the locking element 14.1 The spindle element 13 of the drive unit extends through the locking element 14.1 or engages within internal thread of the locking element 14.1. In this case the travel of the locking element along the spindle element 13 is not limited. During turning the spindle element 13 the locking element 14.1 can move along the whole length of the spindle element 13 and along the length of the elongate guide slot 6. The locking element 14.1 in the present invention can travel much longer than that of the attachment bolt of the '138 reference. The present invention allows for the following benefits:

1. It is possible to arrange the locking element 14.1 at the bone segment 15. Thereafter you can attach the guide element 1 at the bones 5. At the same time the locking element 14.1 is inserted in the elongate guide slot 6. Thereafter you can insert the drive unit within the guide element and the spindle finds automatically the locking element 14.1 Thereafter you can attach or insert the other end of the device at or in the other bone 5. You have no problems to find the locking element 14.1.
2. It is possible to make a through-hole through bones 5 and to insert at first the guide element in both bone parts together with a locking element and to attach the locking element at the bone segment 15. Thereafter you insert the drive unit in the guide element and the spindle through the locking element.
3. It is also possible to insert the whole element 1 through the bones 5 and the segment 15 and to fix the locking element 15 at the segment.

These benefits are attributable to the claimed features of the present invention and particularly the last three lines of claim 15 as follows:

"and wherein the spindle element (13) comprises a threaded rod which passes through the at least one lock and engages with the at least one locking element".

Finally, in the reference it is impossible to move two locking elements on one spindle in opposite directions as claimed in claim 29.

Claim 30 is patentable for the same reasons as claim 15 above and claim 29.

In light of the foregoing, it is submitted that all of the claims as pending patentably define over the art of record and the early issuance of a Notice of allowance is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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